

Checklist for Appeal (Court of Non-Record) (See Generally Arts. 44 and 45, C.C.P.)

1. All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
2. Defendants are not required to go to trial; the defendant can plead guilty or nolo contendere and have a judgment entered.
3. Motions for New Trial
 - a. A defendant has five days after the rendition of judgment and sentence to file a motion for new trial. Art. 45.037, C.C.P.

See Article 45.013, C.C.P., for an increase in the amount of time to file the motion for new trial.

If the defendant mails the motion for new trial on or before the due date and the clerk receives the motion not later than 10 days after the due date, the motion is timely filed. Do not count Saturday, Sunday, or legal holidays.

b. A motion for new trial may be granted not later than 10 days after the date of judgment when the judge, for good cause shown, believes that justice has not been served. Art. 45.038, C.C.P.

Since the judge must rule on the motion by the 10th calendar day after judgment, the motion, if filed by mail, may be overruled by operation of law.

- c. A defendant may only receive one new trial. Art. 45.039, C.C.P.
 - d. The court must hold a second trial as soon as practicable. Art. 45.039, C.C.P.
 - e. In no case is the State entitled to a new trial.
4. The defendant may give notice of appeal (but is not required to do so). Art. 45.0426(c), C.C.P.
 5. An appeal bond must be filed with the judge who tried the case no later than the 10th day after the date the judgment was entered. Art. 45.0426(a), C.C.P.
 - a. Mailbox Rule - If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. The Court should keep the defendant's postmarked envelope. Art. 45.013, C.C.P.
 - b. If the appeal bond is not timely, the municipal court should still send it to the appellate court. The appellate court does not have jurisdiction if the bond is not timely, and the appellate court shall remand the case back to the municipal court for execution of the sentence. Art. 45.0426(b), C.C.P.
 6. Appearance by mail or delivery in person to the court: the Court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by certified mail, return receipt requested. The defendant has up to 31 days from the date of receiving the notice to file an appeal bond. Art. 27.14(b), C.C.P.
 - a. Mailbox Rule - If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. The Court should keep the defendant's postmarked envelope. Art. 45.013, C.C.P.
 - b. If the appeal bond is not timely, the municipal court should still send it to the appellate court. The

appellate court does not have jurisdiction if the bond is not timely, and the appellate court shall remand the case back to the municipal court for execution of the sentence. Art. 45.0426(b), C.C.P.

7. The appeal bond must be at least two times the amount of the fine and court costs, but in no case less than \$50. Art. 45.0425(a), C.C.P.

8. The appeal bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. Arts. 17.38 and 44.20, C.C.P.

a. Conditions of the appeal bond - Must recite that the defendant has been convicted and has appealed and that the defendant will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. Art. 45.0425(b), C.C.P.

9. If bond is filed after time deadline, the appellate court shall remand (send back) the case to the municipal court to collect the judgment. Art. 45.0426(b), C.C.P.

10. If bond is defective in form or substance, the appellate court may allow the defendant to file a new appeal bond. Art. 44.15, C.C.P.

11. When the court receives the appeal bond, the clerk should date stamp day received. Art. 45.0426(a), C.C.P.

a. Posting of bond perfects (completes) appeal. Art. 44.04(e), C.C.P.

12. The clerk should give the appeal bond to the judge to make a determination if the surety is sufficient. Arts 17.10 and 17.13-141, C.C.P.

13. The clerk shall make copies of all original papers in the case file. Art. 44.18, C.C.P.

14. The clerk shall send all the original papers and attach the appeal bond with a certified record to the appellate court (usually county court).

15. Case is tried de novo in county court. Trial de novo means a whole new trial as if no earlier trial had occurred. Arts. 44.17 and 45.042(b), C.C.P.

16. If the defendant is convicted in the appellate court, the appellate court collects the fine and deposits it in the county treasury.

17. The defendant may not withdraw the appeal.